

REMARKS

Claims 1-103 are pending. Claims 55-103 have been withdrawn in response to a restriction requirement. Applicant reserves the right to pursue these claims in one or more divisional applications.

Claim Amendments

Claims 1-54 are currently under consideration. Claims 1-54 have been deleted and claims 104-117 have been added. No new matter has been added as result of the addition of these claims.

Claim Objections

Claims 5, 6, 8, 9-24, 27-29, 32, 35-36, 39, 41-42, 44, 46-51 and 54 are objected as being in improper form as depending from other multiple dependent claims. Claims 5, 6, 8, 9-24, 27-29, 32, 35-36, 39, 41-42, 44, 46-51 and 54 have been canceled. In view thereof, this objection is now moot and should be withdrawn.

Claim Rejections – 35 USC Section 101

Claims 1-5, 25-29, 32, 36, 47-48 and 50-54 are rejected under 35 USC Section 101 as being directed to non-statutory subject matter. This rejection has been obviated with the cancelation of claims 1-5, 25-29, 32, 36, 47-48 and 50-54. Therefore, this rejection is now moot and should be withdrawn.

Claims Rejections – 35 USC Section 102

Claims 1-17, 21-27, 29-34, 36-38 and 46-54 are rejected under 35 USC Section 102(b) as being anticipated by Hallenbeck et al. (US Patent No. 5,998,205). Applicant respectfully traverses.

Specifically, claims 1-17, 21-27, 29-34, 36-38 and 46-54 have been deleted. In addition, with respect to new claims 104-117, Hallenbeck fails to teach or suggest a recombinant adenovirus, wherein upon infection of an eukaryotic cell, the adenovirus expresses a first polypeptide comprising an E1B and E4 polypeptide prior to expressing a second polypeptide comprising an E1A polypeptide, whereby the E4 polypeptide is expressed prior to the E1B polypeptide.

Hallenbeck is directed to targeted recombinant vectors and particularly adenovirus vectors, especially those that are replication-conditional vectors, and to methods for using them. Hallenbeck does not, however, teach or suggest a recombinant adenovirus, wherein upon infection of an eukaryotic cell, the adenovirus expresses a first polypeptide comprising an E1B and E4 polypeptide prior to expressing a second polypeptide comprising an E1A polypeptide, whereby the E4 polypeptide is expressed prior to the E1B polypeptide. In view thereof, this rejection is now moot and should be withdrawn.

Claims 39-40 are rejected under 35 USC Sections 102(a) and (e) as being anticipated by Irving et al. (US 2003/0095989). Applicants respectfully traverse.

As a preliminary matter, claims 39-40 have been deleted. Irving et al. fail to teach or suggest a recombinant adenovirus, wherein upon infection of an eukaryotic cell, the adenovirus expresses a first polypeptide comprising an E1B and E4 polypeptide prior to expressing a second polypeptide comprising an E1A polypeptide, whereby the E4 polypeptide is expressed prior to the E1B polypeptide. Irving et al. only teach and disclose viral vectors having genomes comprising adenovirus replication genes, and at least one heterologous gene that functionally replaces an adenovirus gene required for replication or assembly. In view thereof, this rejection is now moot and should be withdrawn.

Claim Rejections – 35 USC Section 112

Claims 6-54 are rejected as being indefinite. More specifically, claims 6 and were each rejected as being indefinite. Claims 6-54 have been deleted. Therefore, Applicant has now obviated this rejection. In view thereof, this rejection should be withdrawn.

Statutory Double Patenting

Claims 1-3 were provisionally rejected under 35 USC Section 101 as claiming the same invention as that of claims 89-91 of copending application no. 10/531,366. Applicants respectfully traverse.

Claims 1-3 of the above-identified application have been deleted. In addition, claims 89-91 of copending application no. 10/531,366 have also been deleted (See Amendment filed on August 14, 2008). In view thereof, this rejection is now moot and should be withdrawn.

Obviousness Type Double Patenting

Claims 1-2 and 39-40 are provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 47-48 of copending application no. 10/451,210. Applicant wishes hold this rejection in abeyance until notification by the Examiner of allowable subject matter.

REQUEST FOR RECONSIDERATION

Reconsideration and withdrawal of all claim rejections are respectfully requested. Applicant believes that the present application is in condition for allowance. Should the Examiner have any questions or would like to discuss any matters in connection with the present application, the Examiner is invited to contact the undersigned at (312) 627-2184.

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